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SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1932.

No. 587

CONSOLIDATED TEXTILE CORPORATION,
A CORPORATION, APPELLANT,

vs.

JOHN J. GREGORY, JUDGE OF THE CIRCUIT COURT OF MILWAUKEE COUNTY.

STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

In compliance with Rule 12 of the Supreme Court of the United States, the appellant submits its statement disclosing the basis on which it is contended that the Supreme Court of the United States has jurisdiction to review on appeal the judgment entered by the Supreme Court of the State of Wisconsin in favor of the appellee and against the appellant.

I. Statutory Provisions Believed to Sustain the Jurisdiction of the Supreme Court of the United States.

The appellant relies upon the provisions of Section 237 of the Judicial Code (as amended by Act of Febru-

ary 13, 1925, Chapter 229, 43 Stat. 936, effective May 13, 1925), the Act of January 31, 1928, Chapter 14, 45 Stat. 54, and the Act of April 26, 1928, Chapter 440, 45 Stat. 466. These sections provide as follows:

Section 237 of the Judicial Code (as amended by Act of February 13, 1925, Chapter 229, 43 Stat. 936, effective May 13, 1925):

> "(*a*) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

Act of January 31, 1928, Chapter 14, 45 Stat. 54:

> "That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.
>
> SEC. 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of

record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required: *Provided, however,* That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts."

Act of April 26, 1928, Chapter 440, 45 Stat. 466:

" 'An Act in reference to writs of error', approved January 31, 1928, Public, Numbered 10, Seventieth Congress, be, and it is hereby, amended to read as follows:

'SEC. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error'."

II. The Statute of the State of Wisconsin, the Validity of Which is Involved.

The State Statute the validity of which is challenged by the appellant is Subsection (13) of Section 262.09 of the Wisconsin Statutes, and is found in the official printed edition of the Wisconsin Statutes for the year 1931, at pages 1970-1971.

The statute provides as follows:

> "262.09. Service on corporations. Actions against corporations shall be commenced in the same manner as personal actions against natural persons. The summons and the accompanying complaint or notice aforesaid shall be served, and such service held of the same effect as personal service on a natural person, by delivering a copy thereof as follows:
>
> * * * * * * *
>
> (13) If against any other foreign corporation, to any such officer being within the state, or to any agent having charge of or conducting any business therefor in this state, or any trustee or assignee of such corporation, or upon the secretary of state, as provided in section 226.02. But such service can be made upon a foreign corporation only either when it has property within the state or the cause of action arose therein, or the cause of action exists in favor of a resident of the state, and upon the secretary of state only when the cause of action arises out of business transacted in this state or when the defendant has property therein."

III. Date of the Judgment Sought to be Reviewed and the Date Upon Which the Application for Appeal was Presented.

The judgment of the Supreme Court of the State of Wisconsin, which the appellant seeks to have reviewed by the Supreme Court of the United States, was entered on the 9th day of November, 1932. The application for appeal was presented to the Chief Justice of

the Supreme Court of the State of Wisconsin on the 6th day of December, 1932.

IV. The Nature of the Case and the Judgment of the Court Were Such as to Bring the Case Within the Jurisdictional Provisions Relied Upon.

(a) Statement of Facts.

The Consolidated Textile Corporation is a corporation organized under the laws of the State of Delaware, with its office and principal place of business in New York City. It is not licensed to do business in the State of Wisconsin. It has never done any business in the State of Wisconsin. It has no property or place of business or office or agent in the State of Wisconsin. None of its officers are residents of the State of Wisconsin. Frederick K. Rupprecht, its president, is a resident of the City, County and State of New York.

On January 14, 1932, an action was commenced in the Circuit Court for Milwaukee County wherein Katherine Gold is plaintiff and Consolidated Textile Corporation is defendant. The service of the summons was made upon Frederick K. Rupprecht while he was in the City of Milwaukee, State of Wisconsin, under the following circumstances: Walter L. Gold, an attorney of this court, represented the alleged owners of $9,200.00 principal amount of the first mortgage bonds of the Consolidated Textile Corporation, to-wit: Lillie Mock, Cecelia Alshuler, Crowley Company, Inc., Katherine Gold and Walter Gold, on whose behalf an action was commenced on January 19, 1931, in the

Municipal Court in the City, County and State of New York by one Edythe H. Stegeman against the Consolidated Textile Corporation to recover interest due on said bonds on December 1, 1930. No judgment has been entered in said action, although a motion for summary judgment was made.

Prior to the institution of the suit in New York, a committee was formed for the protection of the holders of the first mortgage bonds of the Consolidated Textile Corporation. The committee was of the opinion that the best interests of the holders of all bonds required that no judgment be entered in the action pending in New York.

Subsequently Frederick K. Rupprecht, the president of the Consolidated Textile Corporation, arranged with Mr. Gold for a conference in Milwaukee to discuss the situation of the bondholders. On January 14, 1932, Mr. Rupprecht came to Milwaukee for the sole purpose of discussing with Mr. Gold the New York action and to present to Mr. Gold facts which, in Mr. Rupprecht's opinion, would dissuade Mr. Gold from further proceeding with the action in New York. On the same day Mr. Rupprecht conferred with Mr. Gold in Milwaukee, and at the conclusion of the conference Mr. Rupprecht was served with summons and complaint.

The complaint in the lower court alleges that Katherine Gold is the holder of certain first mortgage 20 year 8% sinking fund convertible gold bonds issued by the Consolidated Textile Corporation "payable to bearer 20 years after date at the principal office of the Chase National Bank in the City of New York,

with interest''; that the interest on said bonds has not been paid and is now past due; that by reason of default in payment of interest the principal amount of said bonds likewise became due. Plaintiff demands judgment for the principal amount of said bonds, together with unpaid interest.

No part of the transaction involving the issue of first mortgage 2 year 8% sinking fund convertible gold bonds by the Consolidated Textile Corporation took place in the State of Wisconsin.

The Consolidated Textile Corporation owns all of the stock of the Consolidated Selling Company, which is a corporation organized under the laws of the State of Delaware, with its office and principal place of business in the City, County and State of New York. The Consolidated Selling Company is not licensed to do business in the State of Wisconsin. The only business conducted by the Consolidated Selling Company in the State of Wisconsin is interstate in character and is conducted by means of nonresident agents, who solicit orders in Wisconsin, which are accepted in New York City.

(*b*) *The appeal is from a final judgment in the highest court of a State in which a decision in the suit could be had.*

In the Circuit Court for Milwaukee County, Wisconsin, the defendant, Consolidated Textile Corporation, appeared specially for the sole purpose of objecting to the jurisdiction of the court. The Circuit Court held that it had jurisdiction, whereupon the defendant applied to the Supreme Court of the State of Wiscon-

sin for a writ of prohibition restraining the plaintiff from further prosecuting said action in the Circuit Court.

The Supreme Court of the State of Wisconsin issued an alternative writ of prohibition, to which the respondent made return. The Consolidated Textile Corporation demurred to the return. On the 9th day of November, 1932, the Supreme Court of the State of Wisconsin handed down a decision, in which it held that the Circuit Court for Milwaukee County had jurisdiction of the action and that the petition for a writ of prohibition had been denied. On the same day final judgment denying the writ of prohibition was entered.

The Supreme Court of the State of Wisconsin is the court of last resort in the State of Wisconsin and is the highest court of the State in which a decision in the suit could be had. This appeal, therefore, is an appeal from a final judgment within the meaning of Section 237 of the Judicial Code (as amended by Act of February 13, 1925, Ch. 229, 43 Stat. 936, effective May 13, 1925). *Baudini Petroleum Co.* v. *Superior Court*, 284 U. S. 8, 14; *Michigan Central R. Co.* v. *Mix*, 278 U. S. 492, 494.

The judgment is also a judgment from which a writ of error would lie under Section 237 of the Judicial Code prior to the amendment of February 13, 1925. *Missouri ex rel. St. Louis B. & M. R. Co.* v. *Taylor*, 266 U. S. 200, 206-207; *Detroit & M. R. Co.* v. *Mich. R. Com.*, 240 U. S. 564, 570-571.

(*c*) *The validity of a statute of the State of Wisconsin was drawn in question on the ground of its*

being repugnant to the Constitution of the United States and the decision of the Supreme Court of the State of Wisconsin was in favor of the validity of the statute.

In its petition for a writ of prohibition the Consolidated Textile Corporation specifically alleged that subsection (13) of Section 262.09 of the Wisconsin Statutes was unconstitutional in that it deprived the petitioner of its property without due process of law, in violation of the 14th Amendment to the Federal Constitution. The Supreme Court in its opinion specifically held that the statute was valid and constitutional.

The petition of the Consolidated Textile Corporation alleged that Section 262.09 (13) of the Wisconsin Statutes violated the provisions of the 14th Amendment to the Federal Constitution by depriving it of its property without due process of law in that it authorized service to be made on an officer of an unlicensed foreign corporation which had never done business in the State of Wisconsin and which had no property or place of business or office or officer or agent in the State of Wisconsin when the officer was temporarily in the State of Wisconsin for the purpose of compromising an action instituted by a resident of Wisconsin against the foreign corporation in a sister State.

The petition alleged that Section 262.09 (13) of the Wisconsin Statutes violated the provisions of the 14th Amendment to the Federal Constitution by depriving Consolidated Textile Corporation of its property without due process of law in that it authorized serv-

ice to be made on an officer of an unlicensed foreign corporation which had never done business in the State of Wisconsin and which had no property or place of business or office or officer or agent in the State of Wisconsin when the officer was temporarily in the State of Wisconsin for the purpose of compromising an action instituted by a resident of Wisconsin against the foreign corporation in a sister State, and where such foreign corporation owned all of the stock of a subsidiary unlicensed foreign corporation which did only an interstate business in Wisconsin through non-resident agents who solicited orders in Wisconsin which were accepted in a sister State.

Lastly, the petition alleged that Section 262.09 (13) of the Wisconsin Statutes violated the provisions of the 14th Amendment to the Federal Constitution by depriving the Consolidated Textile Corporation of its property without due process of law in that it authorized service to be made upon the officer of an unlicensed foreign corporation which had never done business in the State of Wisconsin and which had no property or place of business or office or officer or agent in the State of Wisconsin when the officer was temporarily in the State of Wisconsin for the purpose of compromising an action instituted by a resident of Wisconsin against the foreign corporation in a sister State, and where the cause of action sued upon in Wisconsin arose out of a transaction outside the State.

The Supreme Court of the State of Wisconsin did not pass upon the two latter constitutional objections. The court did, however, reject the first constitutional objection, and held that the service on the president

of the Consolidated Textile Corporation was authorized under Section 262.09 (13) of the Wisconsin Statutes, and that the statute was valid and constitutional.

It thus appears that the provisions of Section 237 of the Judicial Code (as amended by Act of February 13, 1925, Ch. 229, 43 Stat. 936, effective May 13, 1925), requiring the constitutional question to be raised in the lower court and to be passed upon adversely to the Federal claim, have been fully satisfied.

Home Ins. Co. v. *Dick*, 281 U. S. 397, 407;

Brinkerhoff-Faris Trust & Sav. Co. v. *Hill*, 281 U. S. 673, 677-678;

Missouri ex rel. Mo. Ins. Co. v. *Gehner*, 281 U. S. 313, 320;

Chicago, R. I. & P. R. Co. v. *Perry*, 259 U. S. 548, 551;

Chicago, B. & Q. R. Co. v. *Chicago*, 166 U. S. 226, 231-232.

(d) The question presented on appeal is a substantial Federal question.

The appeal squarely presents the question as to the constitutionality of a state statute which permits service to be made upon the officer of an unlicensed foreign corporation which does no business in the State, has no property or place of business or officer or office or agent in the State, and where the service was had upon the President of such corporation while he was temporarily in the State on an isolated visit for the purpose of compromising a suit brought against said corporation in a sister state. The decisions of the United

States Supreme Court uniformly hold that service had under such circumstances deprives the foreign corporation of its property without due process of law.

Rosenberg Bros. & Co. v. *Curtis Brown Co.*, 260 U. S. 516;

James-Dickinson Farm Mtge. Co. v. *Harry*, 273 U. S. 119;

Bank of America v. *Whitney Bank*, 261 U. S. 171;

International H. Co. v. *Kentucky*, 234 U. S. 579;

Riverside & Dan River Cotton Mills Co. v. *Menefee*, 237 U. S. 189;

St. Louis S. W. R. Co. v. *Alexander*, 227 U. S. 218;

Louisville & N. R. Co. v. *Chatters*, 279 U. S. 320, 324-325;

Philadelphia & R. R. Co. v. *McKibbin*, 243 U. S. 264, 265;

Commercial Mut. Acc. Co. v. *Davis*, 213 U. S. 245.

The doing of business in the State by a subsidiary unlicensed foreign corporation does not constitute the doing of business in the State by the parent corporation.

Cannon Mfg. Co. v. *Cudahy Packing Co.*, 267 U. S. 333;

Philadelphia & R. R. Co. v. *McKibbin*, 243 U. S. 264;

Peterson v. *Chicago R. I. & P. R. Co.*, 205 U. S. 364;

Pullman's Palace Car Co. v. *Missouri P. R. Co.*, 115 U. S. 587, 597;

Conley v. *Mathieson A. Works*, 190 U. S. 406;

Louisville & N. R. Co. v. *Chatters*, 279 U. S. 320, 326.

The further question is presented as to whether a State may constitutionally provide by statute for service on the officer of an unlicensed foreign corporation which does no business in the State, and has no property or place of business or office or officer or agent in the State, when such officer has made an isolated visit to a State for the purpose of compromising an action instituted against the corporation in a sister State, where the cause of action arose out of a transaction outside the State. The United States Supreme Court has also held in these circumstances that such service is unconstitutional in that it deprives the corporation of its property without due process of law.

Old Wayne Mut. L. Asso. v. *McDonough*, 204 U. S. 8;

Robert Mitchell Furn. Co. v. *Seldon Breck Cons. Co.*, 257 U. S. 213, 215-216;

Pennsylvania F. Ins. v. *Gold Issue M. & M. Co.*, 243 U. S. 93;

Louisville & N. R. Co. v. *Chatters*, 279 U. S. 320;

Simon v. *Southern R. Co.*, 236 U. S. 115;

Morris & Co. v. *Skandinavia Ins. Co.*, 279 U. S. 405, 408-409.

We respectfully submit that the United States Supreme Court has jurisdiction over the appeal of the Consolidated Textile Corporation.

Respectfully submitted,

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